BRIEF IN SUPPORT OF PETITION.

I.

The Jurisdiction to Grant the Writ.

The jurisdiction to review the order of the Special Court is invoked under Section 745 of Chapter XV of the Chandler Act (11 U. S. C. A. Sec. 1245) which authorizes a review by this court on certiorari within sixty days from the entry of any final order. The order was entered October 21, 1940 and the petition is filed within the sixty-day period under Section 745.

II.

Opinion Below.

In deciding that petitioner was not entitled to compensation on jurisdictional grounds the court did not render any opinion but adopted the decision of the Special Court in the *Baltimore & Ohio R. R.* case (34 F. Supp. 154).

III.

Statement of the Case.

This case involves the question whether or not the Special Court under the Railroad Adjustment Act had jurisdiction to allow compensation to petitioner who represented a creditor and performed services in the proceedings. The court held that attorneys for creditors may not recover any compensation (no matter how valuable their services were) as long as the expense

was not incurred by the debtor, on the ground that it was without jurisdiction to allow such compensation. Its decision was based on the opinion of Judge Chestnut in the *B. & O.* case (34 F. Supp. 154).

IV.

Points Relied on for Reversal.

1. The court erred in construing Section 1225 of the Railroad Adjustment Act as a limitation on its power or jurisdiction to allow compensation to attorneys for creditors who rendered valuable services to the estate. It was its duty to construe that section as a limitation and restriction on the debtor not to incur any expenses without the approval of the court but not as a limitation on the power or jurisdiction of the court.

2. The Special Court possessed powers of a court of equity and of a court of bankruptcy and the allowance of compensation for beneficial services rendered to an estate was inherently in such court.

3. The Railroad Adjustment Act is remedial, calling for a liberal and reasonable construction. The court erred in giving the Act a narrow and unreasonable construction as to limit its jurisdiction to fees and expenses incurred by the debtor and not by the creditors.

ARGUMENT.

I.

Section 1125 is a limitation on the power of the Railroad to incur expenditures without the approval of the court but is not a limitation on the powers of the court to allow compensation to attorneys who rendered services to the estate in connection with the proceedings of which it had jurisdiction of the parties and subject matter.

The Special Court adopted the opinion in the *Baltimore & Ohio* matter (34 F. Supp. 154) to the effect that Section 1225 was a limitation on the power or jurisdiction of the court to pay compensation to attorneys for creditors even if their services were beneficial to the estate. The opinion in the *Baltimore & Ohio* matter is basically unsound.

(a) Section 1225 is no limitation on Section 1213 and the two sections require a reasonable construction.

A proper construction of Section 1225(6), on which the opinion relied will lead to the conclusion that it *is not a restriction or limitation of the power of the court to allow compensation, but is a restriction on the powers of the Railroad* to incur large expenditures without the approval of the court. This section was evidently inserted because the power to manage the affairs of the Railroad by the appointment of a Receiver or Trustee *was taken away from the court.* Congress had to find a way of protecting the estate against large expenditures over which the court had no control. In other words, Congress did not want, on the one hand, to deprive the

creditors of their remedies and deprive the courts of their power to protect the creditors, and on the other hand to give the absolute power to the debtor to incur all expenses during such period. *It therefore limited the debtor's power* to expend the funds without the sanction of the court. *This was in no sense a limitation on the power of the court to pay for services rendered to the estate on behalf of creditors.*

(b) The Bankruptcy Act is remedial and requires a liberal and reasonable construction.

The National Bankruptcy Act is remedial in its nature and as such must be *reasonably* and *liberally* construed as to "promote justice." (*Bear* v. *Chase,* 99 F. 916, 920; *Many* v. *Hood,* 37 F. (2) 212, 214, C. C. A. 4.) In construing the meaning of a statute and the intent, under the doctrine of "reasonable" or "equitable" construction, courts must bear in mind the principle that the legislature, if it performs its functions properly, has as its ultimate intent the enactment of laws founded on recognized *concepts of justice, common sense and reason* —all of which operate to control the legislature in the performance of its law-making function. These concepts are those adhered to by the people of the state. Civilized society is founded upon certain standards of ethical conduct. The people have rather definite ideas of what is just and proper, and laws must, in a democracy, harmonize with the general aims and standards of the people. It must be assumed that the law-makers, who represent the people, enact all laws in the light of what the people believe is honest, fair and equitable and in harmony with the public welfare. In other words, the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legis-

lation. Consequently, where the statute or *a suggested construction operates harshly, ridiculously,* or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent, or suggested meaning of the statute, *was not the one intended by the law-makers.* In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, in addition to the apparent or suggested meaning, there is little reason to believe that it represents the legislative intent.

If the basic legislative intent is to promote or advance the people's standards of justice and propriety, then it is surely proper for the courts to be concerned with such intent. All laws should, as a result, be construed with reference to this intent. This doctrine was clearly stated in *Riggs* v. *Palmer,* 115 N. Y. 506, 22 N. E. 188.

In *Grier* v. *Kennan,* 64 F. (2) 605, at page 607, the court said:

> "The paramount duty of the court in construing a statute is to ascertain and give effect to the legislative intent. * * *
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> So, in *United States ex rel. Gottlieb* v. *Commissioner of Immigration* (C. C. A. 2) 285 F. 295, it is held that 'in construing statutes, it is the duty of the court to endeavor to ascertain the intention and policy of Congress in their enactment, and to make practical application of that intention to the facts of the case.' *A particular construction must not produce inequality and injustice if another and more reasonable interpretation is possible. Knowlton* v. *Moore,* 178 U. S. 41, 20 S. Ct. 747, 44 L. Ed. 969.
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> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence, and it will always be presumed that the legislature intended exceptions to its lan-

guage, which would avoid results of this character.' *United States* v. *Kirby,* 7 Wall. 482, 483, 19 L. Ed. 278.

The legislative intent must be determined from the act as a whole with especial regard to the circumstances surrounding the Legislature at the time of its enactment; and *'remedial statutes will be liberally construed, to give effect to the humane purpose of the legislature.' Camunas* v. *New York & P. R. S. S. Co.* (C. C. A. 1) 260 F. 40, Rev. St. U. S. Sec. 1042 (section 641, 18 U. S. C. A.) is a remedial statute. *United States* v. *Pratt* (D. C.) 23 F. (2d) 333, 334." (Italics supplied.)

In the light of the foregoing it is reasonable to construe that Congress intended to limit the expenses which the debtor was to incur and not to limit the power of the court to allow expenses which are a proper charge on the estate for services performed beneficial to the estate. Section 1225(6) authorizes the court to pass upon "amounts" or considerations "directly or indirectly" paid or to be paid. The term "direct" may well refer to expenditures incurred by the debtor while the term "indirect" refers to allowances by the court as a result of the jurisdiction invoked by the debtor to attorneys representing parties to the litigation.

(c) Under the rule of reasonable and liberal construction the allowance of compensation cannot be confined to such compensation as the debtor was inclined to pay but to such compensation which justice dictates should be paid as a result of the jurisdiction invoked.

The implications and intendments arising from the language of a statute are as much a part of it as if they had been expressed. (*U. S.* v. *Sischo,* 262 U. S. 165.) *The implication may be compelled by a reasonable view of the statute,* the contrary of which would be *ridiculous or*

absurd. (*Gervin* v. *Marconi Wireless Tel. Co.*, 275 Fed. 486.) It would be *unreasonable to construe* that Congress intended to enable the debtor to enter into contracts *to pay fees and compensation to those who would favor its plan* and not to allow any compensation to the parties who are brought into the proceedings for the purpose of testing the fairness and feasibility of the Plan. The Act provides that the court must find that the Plan is fair and reasonable and does not discriminate. A court cannot properly determine such issues if the only persons who will be paid for their expenses will be those *who will sponsor the plan,* and the individual investors, widely scattered all over the country, will have to present the questions at their own expense. Such a *narrow construction* should not be placed on this Act. A liberal and reasonable construction leads to the irresistible conclusion that the *restriction or limitation of expenditures has reference to expenditures that the petitioner or debtor may incur. It is not a limitation on the power of the court to compensate attorneys who have contributed to the understanding of the problems and to the protection of the interest of the investors.* The question here is not the "exercise of the power" but the "power" to decide on the allowance and there was no limitation on the "power to decide." (*Montgomery* v. *Equitable Life Ass. Co.*, 83 F. (2) 758.) The distinction between the "power to decide" and the "exercise of the power" was entirely overlooked.

II.

The Special Court is vested with the joint power of a court of equity and a court of bankruptcy under Section 1213, and in such capacity its power or authority is unlimited as to any subject matter involved in the proceedings under the Railroad Adjustment Act.

The opinion of Judge Chestnut, which was adopted by the Special Court, is based on Section 1225 with regard

to *"approval* of *expenditures"* and upon his construction that the nature of the case is not one where a court of equity has general jurisdiction over "a fund" in its control or possession. He entirely overlooked Section 1213 which reads:

> "such three-judge court *shall be vested* with and shall exercise *all* the powers of a district court sitting in *equity* and *all* the powers as a court of *bankruptcy* necessary to carry out the intent and provisions of this chapter, including the classification of claims at such time and in such manner as the court may direct." (Italics supplied.)

The Special Court was therefore vested with all the powers of *equity* and *bankruptcy* courts, without limitations.

(a) Under its equity powers the Court has inherent powers to allow fees to attorneys representing creditors who performed services of value to the estate regardless of whether or not it had any fund in its possession.

It is well settled that in the absence of a statute, *a court of equity has the inherent power to allow compensation* for services rendered by attorneys which are *beneficial to the estate.* It is not necessary that the court be possessed of a "fund" but it is sufficient if the court has *constructive possession* of the "res." (*Wallace* v. *Fiske,* 80 F. (2) 897, 901.) While the Railroad Adjustment Act has taken away the power of the court to take *actual* possession by the appointment of a Trustee or Receiver, *it was expressly given the constructive possession by the terms of the Act* (Chap. 15, Sec. 1215).

The authorities on the point that a court of equity has the inherent "power" to allow such compensation are abundant and are collected in 49 A. L. R. at page 1150, and in the subsequent annotation in 107 A. L. R.

at page 750. Among the cases cited is *United States* v. *Equitable Trust Co.,* 283 U. S. 738, and *First National Bank* v. *LaSalle-Wacker Building Corp.,* 280 Ill. App. 188, which cites many decisions of this court in support of the proposition that a court of equity may allow compensation to attorneys representing parties who were helpful to the court in passing upon a reorganization plan, *even where no fund was brought into the court.* There, attorneys for some bondholders *opposed* a reorganization plan and made suggestions for its modification. The Railroad Adjustment Act under Section 1215 gave the court the *"exclusive jurisdiction of the petitioner and its property, wherever located."* The *court* was therefore possessed of the property and of the funds. The cases applicable to instances where attorneys bring in funds to a court have *no application to cases involving the administration of trusts where the court has constructive or actual possession of the trust.* In such cases it is not a question of jurisdiction to allow the fee or the power or authority to do so but *the exercise of discretion.* In some instances the court may even allow compensation to a losing party where the party was brought into the proceeding and his attorney was compelled to defend, as said in *Freeman* v. *Shreve,* 86 Pa. 135, on page 138:

> "He will often order such *compensation to counsel for a losing party* who is decreed to have no interest, on the equitable ground that being a necessary party he was compelled to litigate or had sufficient reason. *It is a charge which the fund ought in equity and good conscience to bear."*

In *Trustees* v. *Greenough,* 105 U. S. 527, the court held that attorneys representing bondholders who are brought into the litigation may be allowed fees out of the trust estate when they have performed services for the benefit of the estate on the theory that such at-

torney "has at least acted the part of a trustee in relation to the common interest." In *Siebert* v. *Minneapolis & St. L. Railway Co.,* 58 Minn. 58, the court considered the question whether attorneys for bondholders who were brought into the case were entitled to compensation for services rendered for the common benefit of the beneficiaries. The court applied the doctrine that *such attorneys who rendered services to the estate have performed the services which the trustee might have performed* and would be allowed to charge the trust estate and the position of the attorneys was not any different. The court said on page 64:

> "And if, for any reason, the bondholders are permitted to appear in the action for the purpose of protecting the trust property, and do, in whole or in part, what the trustee might have thus done, it seems to us that there can be no doubt of the power of the court, upon a proper showing, to make the same reimbursement to them which it might have made to the trustee and he performed the same services and incurred similar expenses. This does not mean that both should be paid for the same thing, but that, after determining the amount which should be allowed for expenses necessarily or reasonably expended in preserving and protecting the trust property, the court may apportion the amount between the trustee and the bondholders, or award it all to one of them, according to the equities of the case."

These cases illustrate the proposition of law which is completely overlooked by Judge Chestnut that *litigation involving a trust estate,* where beneficiaries are brought in and are compelled to participate in the litigation, *stands in a different class and category* from the class of cases where a creditor maintains his suit to bring in a fund before the court. Such cases have no application to the instant case. *Such jurisdiction does not exist on the theory that a "fund" is involved but on the theory*

that a Trust is involved (*Wallace* v. *Fiske,* 80 F. (2) 897, 901, 902). Here, the Act provided that notice be given to all parties in interest and that they are all entitled to a hearing. It would be unreasonable to expect that individual investors should be brought into a proceeding involving a trust and be compelled to defend their rights without having the trust estate, which invoked the proceeding, bear the expenses.

(b) The Special Court was also vested with the general power of a Court of Bankruptcy, and the power to allow the compensation was inherently in such court in the absence of any restriction by the Act.

We have shown that Section 1213 conferred on the Special Court the general power of a court of bankruptcy in addition to the equity powers. *The power of a court of bankruptcy to allow compensation is not limited or restricted.* Its *"jurisdiction"* or *"power"* is without limitation (Collier on Bankruptcy, 13th Ed. 1940, Vol. II, Sections 23.03 and 23.04). The court overlooked that it was vested with the *power and authority of a combined equity and bankruptcy court* by Section 1213 of Chapter XV under the Amendment to the Bankruptcy Act.

(c) It would be a dangerous precedence to allow a debtor to pay out of the debtor's estate all expenses to put over its Plan and to deny expenses to creditors who are brought into the proceedings to protect their rights.

This court is not unfamiliar with many reorganizations where consents as large as 98 per cent were obtained and yet, at the instance of a *single* bondholder, the court declared the plan unfair and inequitable. Under the early decisions under Section 77B courts have

adopted the theory that as long as a required number of creditors or stockholders consented to the plan it is an indication of its fairness and courts must approve such plan. This doctrine was repudiated here in *Case* v. *Los Angeles Lumber Products Co.,* 308 U. S. 106, and in a line of cases followed by the various circuits. To enable a court to pass on the fairness of a plan of adjustment it is necessary that opportunity be given to investors to present their views to the court. If such means be denied by casting the burden of the expense on the creditor it is a foregone conclusion that any plan proposed by a large corporation, which has the only power to promise compensation, will be one-sided. In *Sofian* v. *Congress Realty Co.,* 98 F. (1) 499, the court said:

> "Even if a large majority of creditors have approved a plan, that is of no avail to sustain it if it is unfair, indiscriminatory, inequitable or not feasible. * * * In many reorganization proceedings such as this, the rights of small, scattered and thoroughly discouraged bondholders are involved. Often they are unable to employ counsel to protect their rights."

If it be true, that the Act prohibits the court from compensating those who render service for the protection of the "small, scattered and discouraged creditors" and *will only compensate those who are employed by the proponents of the plan,* then it is a foregone conclusion that the court will not have the benefit and assistance of counsel representing creditors to bring forth such facts to the attention of the court upon which it may arrive at a proper conclusion on the fairness of the plan. A plan of adjustment is not any different than a plan of reorganization. In both cases the court can arrive at a determination upon facts and evidence brought out by the attorneys in the case. It goes without saying that attorneys who are compensated by the petitioner

will bring out the facts to sustain the petition. In order to have a thorough understanding of the issues involved and bring out the necessary facts a court must be possessed of the power to compensate attorneys for other creditors who will assist and aid it in arriving at a just decision. We believe that this is what prompted the court to say in *Re Watco Corporation,* 95 F. (2d) 249, that *"it is as important that fees for meritorious services actually rendered and necessary to effectuate a reorganization should be allowed as it is that the court should prevent the undue enrichment of attorneys for services of no value to the debtor."* This view was also adopted in *Re Irving-Austin Bldg. Corp.,* 100 F. (2) 574.

For the foregoing reasons we urge the allowance of the Writ.

Respectfully submitted,

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